IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 104 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHAGANLAL BHANABHAI GANDHI

Versus

CHHAGANLAL ZAVERCHAND SHAH

Appearance:

1. Second Appeal No. 104 of 1982

MR SURESH C. SHAH, Advocate for SHRI. S.N.SHELAT for Petitioner No. 1

MR DAKSHESH B.MEHTA, Advocate for SHRI DD VYAS for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 20/02/2003

ORAL JUDGEMENT

The appellants were defendants and the respondent was plaintiff in Regular Civil Suit No. 260 of 1974 in the Court of learned Civil Judge (J.D), Gandevi. The plaintiff had filed the said Suit for a declaration that he was the owner of the suit land and the defendants had only right of way in the suit land to go to their properties and that they had no other right, title or interest in the suit land. Since the defendants were trying to construct a latrine on the suit land without his consent, the plaintiff had given an application to Bilimora Municipality and the Municipality had issued an injunction order against defendants. However, they were proceeding further in breach of the order. The plaintiff, therefore, prayed for a permanent injunction to restrain the defendants from making any construction on the suit land.

2. The defendants filed a written statement and resisted the suit on various counts.

3. The learned trial Judge raised necessary issues arising from the pleadings of the parties and at the end of the trial, held that the plaintiff had failed to prove that he was the owner of and in possession of the suit land and that the defendants had no right or interest in the suit land except right of way. He found that the suit land belonged to a Partnership firm in which the plaintiff was one of the Partners. Thus, the plaintiff and the defendants were co-owners of the suit land, but none of them was the sole owner. He also held that the defendants, who were co-owners along with the plaintiff, had no right to construct a latrine without the consent of the plaintiff who was one of the co-owners. However, he held that the plaintiff had not joined other co-owners as parties and the suit was bad for non-joinder of parties. He, therefore, dismissed the suit.

4. The plaintiff, therefore, filed an appeal in the District Court (Regular Civil Appeal No. 60 of 1980). The learned District Judge confirmed the finding of the trial Judge that the plaintiff was a co-owner of the property in dispute and that the defendants had no right to construct a latrine on the suit land. However, he disagreed with the decision of the learned trial Judge on the issue of non-joinder of the parties and held that the plaintiff was entitled to the relief prayed for on the ground that he was the co-owner of the property. He, therefore, by judgement and order dated 19th Sept. 1981, allowed the appeal and decreed the suit filed by the respondent/plaintiff.

5. The appellants, who are the original defendants, have, therefore, , filed this Second Appeal No. 104 of 1982 under Section 100 of the CPC. It was admitted on 25th March, 1982, and the substantial questions of law which were said to be involved have been set out on page (B) of the paper book.

6. Now the finding that the plaintiff and the defendants were co-owners of the suit land is based on the interpretation of Sale-deed Exhibits 67, 68 and 69 and the Will Exhibit 45 executed by Pirojsha Ratanji, predecessor in title. On going through the said documents, I do not find that the Courts below have committed any error of law in arriving at the said concurrent finding of fact.

7. Both the Courts below have also held that the defendants are not entitled to construct the latrine in the suit land without the consent of the plaintiff who is the co-owner. There is no infirmity in the said finding.

8. The trial Court dismissed the suit on the ground that the plaintiff had not joined other co-owners as parties. The learned District Judge held that the plaintiff, as one of the co-owners, was entitled to file the suit, when the defendants were trying to construct a latrine on the suit land. The learned District Judge has not committed any error of law in so holding. In my opinion, none of the substantial questions of law as formulated in the appeal survives. The appeal, therefore fails, and is dismissed. No order as to costs.

(M. C. Patel, J.)

*/Mohandas